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VIA HAND DELIVERY

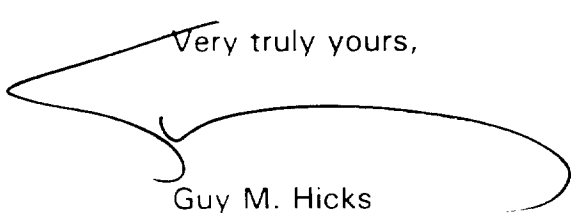
David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Adelphia Business Solutions of Tennessee, L.P. and AVR, L.P. d/b/a Hyperion of Tennessee, L.P., Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.*
Docket No. 00-00927

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of Direct Testimony of John Ruscilli on behalf of BellSouth. Copies of the enclosed are being provided to counsel of record.

Very truly yours,


Guy M. Hicks

GMH:ch
Enclosure

1 BELL SOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF JOHN A. RUSCILLI
3 BEFORE THE TENNESSEE REGULATORY AUTHORITY
4 DOCKET NO. 00-00927
5 JANUARY 31, 2001
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR
9 BUSINESS ADDRESS.
10

11 A. My name is John Ruscilli. I am employed by BellSouth as Senior Director for
12 State Regulatory for the nine-state BellSouth region. My business address is
13 675 West Peachtree Street, Atlanta, Georgia 30375.
14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.
17

18 A. I attended the University of Alabama in Birmingham where I earned a
19 Bachelor of Science Degree in 1979, and a Master's Degree in Business
20 Administration in 1982. After graduation I began employment with South
21 Central Bell as an Account Executive in Marketing, transferring to AT&T in
22 1983. I moved to BellSouth in late 1984 as an analyst in Market Research, and
23 in late 1985 I transferred into the Pricing and Economics organization with
24 various responsibilities for business case analysis, tariffing, demand analysis
25 and price regulation. I served as a subject matter expert on ISDN tariffing in

1 various Commission and PSC staff meetings in Florida, Alabama and Georgia,
2 and I testified in the ISDN hearings in Tennessee. I later moved into the State
3 Regulatory and External Affairs organization with responsibility for
4 implementing both state price regulation requirements and the provisions of
5 the Telecommunications Act of 1996 (the "Act"), through arbitration and 271
6 hearing support. In July 1997, I became Director of Regulatory and
7 Legislative Affairs for BellSouth Long Distance, Inc., with responsibilities that
8 included obtaining the necessary certificates of public convenience and
9 necessity, testifying, providing FCC and state PSC support, and coordinating
10 Federal and State compliance reporting and tariffing for all 50 states and the
11 FCC. I assumed my current position in July 2000.

12
13 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEING FILED
14 TODAY?

15
16 A. The purpose of my testimony is to present BellSouth's position on the
17 unresolved issue in the negotiations between BellSouth and Adelphia Business
18 Solutions of Tennessee, L.P. ("Adelphia"). BellSouth acknowledges
19 Adelphia's initial request for negotiations in Tennessee as occurring on May
20 11, 2000. BellSouth and Adelphia have negotiated in good faith and have
21 resolved the vast majority of the issues raised during the negotiations. Five
22 issues were included in the Petition for Arbitration (the "Petition") filed by
23 Adelphia with the Tennessee Regulatory Authority ("Authority") on October
24 18, 2000. BellSouth added a sixth issue in its Response to Adelphia's Petition.
25 Since the Response was filed, BellSouth understands that the parties have

1 reached agreement as to Issues 1, 3, 4, 5, and 6, leaving Issue 2 as the only
2 issue to be arbitrated. If this is not the case, BellSouth reserves the right to file
3 additional testimony on these issues.
4

5 ***Issue 1: (Attachment 3, Sections 1.8 and 2.3)***

6 ***(A) May Adelphia continue to charge its tariffed rates to BellSouth for***
7 ***leased facility interconnection; (B) If not, should BellSouth be permitted to***
8 ***charge more than Adelphia for the same facility because BellSouth has***
9 ***deployed more switches in the LATA?***
10

11 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?
12

13 A. It is BellSouth's understanding that this issue has been resolved in Tennessee.
14 If this is not the case, BellSouth reserves the right to file additional testimony
15 on this issue.
16

17 ***Issue 2: (Attachment 3, Sections 6.1.9 and 6.1.9.1)***

18 ***(A) Should the parties be obligated to compensate each other for calls to***
19 ***numbers with NXX codes associated with the same local calling***
20 ***area?***

21 ***(B) Should BellSouth be able to charge originating access to Adelphia***
22 ***on all calls going to a particular NXX code based upon the location***
23 ***of any one customer using that NXX code?***
24

1 Q. WHAT IS MEANT BY THE TERM "VIRTUAL NXX" AS USED BY
2 ADELPHIA IN ITS PETITION?

3

4 A. As Adelphia acknowledges, Adelphia can give an NXX code to customers who
5 are not physically located in the rate center to which the NXX code has been
6 assigned. Adelphia, for instance, could give a telephone number associated
7 with the Carthage local calling area (e.g., 615-735-2000) to one of its
8 customers that is physically located in the Nashville local calling area. This
9 type of arrangement is sometimes called a "Virtual NXX" because, in this
10 case, the customer has a "virtual" presence, but not a physical presence, in the
11 Carthage local calling area.

12

13 Q. PLEASE BRIEFLY EXPLAIN THE DISPUTE IN THIS ISSUE.

14

15 A. As I understand it, Adelphia wants to assign a telephone number that is
16 associated with one local calling area (i.e., Carthage) to an Adelphia customer
17 who is located in a different local calling area (i.e., Nashville). Adelphia then
18 claims that because a BellSouth customer in Carthage dials a "local" number to
19 reach the Adelphia customer in Nashville, the call is somehow local traffic
20 subject to reciprocal compensation. Adelphia's position, however, is wrong
21 because it ignores the fact that regardless of the telephone number Adelphia
22 assigns to its customer, the call I have just discussed originates in one local
23 calling area and terminates in a different local calling area. The call, therefore,
24 simply is not a local call, and BellSouth is not required to pay reciprocal
25 compensation for the call.

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Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

A. BellSouth's position on Issue 2(A) is that regardless of the numbers Adelphia assigns to its end users, BellSouth should only pay reciprocal compensation on calls that originate and terminate within the same local calling area.

BellSouth's position on Issue 2(B) is that each party should utilize its NPA/NXXs in such a way, and should provide the necessary information, so that the other party is able to distinguish local traffic (which originates and terminates in the same local calling area) from intraLATA Toll traffic (which originates in one local calling area and terminates in another local calling area) for the other party's originated traffic. If Adelphia does not provide such information to BellSouth, BellSouth has no way of knowing which calls are local (to which reciprocal compensation applies) and which calls are long distance (to which access charges apply).

BellSouth is asking that Adelphia separately identify any number assigned to an Adelphia end user whose physical location is outside the local calling area associated with the NPA/NXX assigned to that end user, so that BellSouth will know whether to treat the call as local or long distance. Providing that Adelphia will separately identify such traffic, for purposes of billing and intercarrier compensation, BellSouth would not object to Adelphia assigning numbers out of an NPA/NXX to end users located outside the local calling area with which that NPA/NXX is associated. Because of this freedom, Adelphia can elect to give a telephone number to a customer who is physically located in

1 a different local calling area than the local calling area where that NPA/NXX is
2 assigned. If Adelphia, however, chooses to give out its telephone numbers in
3 this manner, calls originated by BellSouth end users to those numbers are not
4 local calls. Consequently, such calls are not local traffic under the agreement
5 and no reciprocal compensation applies.

6

7 Q. CAN YOU DESCRIBE WHAT TYPICALLY HAPPENS WHEN AN
8 NPA/NXX IS GIVEN TO A PARTICULAR CARRIER?

9

10 A. When Adelphia, or any other carrier, is given an NPA/NXX code by the North
11 American Numbering Plan Administrator ("NANPA"), the carrier must assign
12 that NPA/NXX code to a specific rate center. In other words, all telephone
13 numbers must have a unique "home". All other carriers use this assignment
14 information to determine whether calls originated by its customers to numbers
15 in that NPA/NXX code are local or long distance calls. For example, assume
16 that the administrator assigns the 615/735 NPA/NXX to Adelphia. Adelphia
17 would tell the administrator where 615/735 is assigned. Let's say Adelphia
18 assigns the 615 735 code to the Carthage, Tennessee rate center. When a local
19 carrier's customer calls a number in the 615/735 code, the local carrier bills its
20 customer based upon whether a call from the location where the call originates
21 to the Carthage rate center is a local call or a long distance call. If a BellSouth
22 customer in the Carthage local calling area calls a number in the 615/735 code
23 in this example, BellSouth treats the call as a local call for purposes of billing
24 its Carthage customer. Likewise, if a BellSouth customer in Nashville calls a

1 number in the 615/735 code, BellSouth would bill the customer for an
2 intraLATA long distance call.

3

4 Q. IS ADELPHIA RESTRICTED TO GIVING NUMBERS ASSIGNED TO A
5 PARTICULAR RATE CENTER TO CUSTOMERS WHO ARE
6 PHYSICALLY LOCATED IN THAT SAME RATE CENTER?

7

8 A. No. In the example above, Adelphia is not restricted to giving numbers in the
9 615/735 code only to customers that are physically located in the Carthage rate
10 center. Adelphia is permitted to assign a number in the 615/735 code to any of
11 its customers regardless of where they are physically located. Again,
12 BellSouth is not attempting to restrict Adelphia's ability to do this.

13

14 To illustrate, let's look at Exhibit JAR-1. Adelphia could assign a number, say
15 615-735-5555, to Adelphia End User ("EU") #1, who is physically located in
16 Carthage. A BellSouth customer in Carthage who calls 615-735-5555 would
17 be billed as if he or she made a local call. BellSouth agrees that this is a local
18 call and, therefore, appropriate reciprocal compensation should apply.

19

20 Hypothetically, however, what happens if Adelphia disassociates the physical
21 location of a customer with a particular telephone number from the rate center
22 where that NPA/NXX code is assigned? Assume that Adelphia gives the
23 number 615-735-2000 to Adelphia EU #2, who is located in Nashville. If the
24 BellSouth customer in Carthage calls 615-735-2000, BellSouth will bill its
25 customer in Carthage as if the customer made a local call. BellSouth would

1 hand off the call to Adelphia, and Adelphia would then carry the call from that
2 point to its end user in Nashville. The end points of the call are in Carthage
3 and Nashville, and therefore, the call is a long distance call. To use a more
4 extreme example, Adelphia could elect to assign another number, say 615-735-
5 3000 to Adelphia EU #3, who is physically located in New York. The
6 BellSouth customer in Carthage who calls 615-735-3000 would be billed as if
7 he made a local call, but the call would actually terminate in New York, which
8 clearly would be a long distance call. Under Adelphia's proposal, BellSouth
9 would pay reciprocal compensation on those calls from Carthage to Nashville
10 or from Carthage to New York, which are clearly long distance calls and not
11 subject to reciprocal compensation.

12
13 Q. IS TRAFFIC JURISDICTION ALWAYS DETERMINED BY THE RATE
14 CENTERS WHERE THE ORIGINATING AND TERMINATING
15 NPA/NXXs ARE ASSIGNED, AS INDICATED IN ADELPHIA'S
16 PETITION?

17
18 A. No. Traffic jurisdiction based on rate center assignment may be used for retail
19 end user billing, but not for inter-company compensation purposes. The FCC
20 has made it clear that traffic jurisdiction is determined based upon the
21 originating and terminating end points of a call, not the NPA/NXXs of the
22 calling or called number. One example is originating Feature Group A
23 ("FGA") access service. With FGA, a customer dials a 7 (or 10) digit number
24 and receives a second dial tone from the distant office. Then the customer, as
25 in the case before equal access, enters a code and dials the long distance

1 number. Even though the originating end user dials a number that appears
2 local to him or her, no one disputes that originating FGA traffic is switched
3 access traffic with respect to jurisdiction and compensation between the
4 involved companies.

5
6 Another example is Foreign Exchange (FX) service. FX service is exchange
7 service furnished to a subscriber from an exchange other than the one from
8 which the subscriber would normally be served. Here again, it appears to the
9 originating customer that a local call is being made when, in fact, the
10 terminating location is outside the local calling area (i.e., long distance).
11 Further, because the call to the FX number appears local and the calling and
12 called NPA/NXXs are assigned to the same rate center, the originating end
13 user is not billed for a toll call. Despite the fact that the calls appear to be local
14 to the originating caller, FX service is clearly a long distance service. The
15 reason the originating end user is not billed for a toll call is that the receiving
16 end user has already paid for the charges from the real NPA/NXX office to the
17 FX office. There are charges for this function and they are being paid by the
18 customer that is benefiting from the FX service.

19
20 Q. WHEN ADELPHIA ASSIGNS NUMBERS IN THE MANNER YOU HAVE
21 DESCRIBED, IS IT ATTEMPTING TO DEFINE ITS OWN LOCAL
22 CALLING AREA?

23
24 A. When Adelphia assigns numbers in the manner described, Adelphia is not
25 necessarily attempting to define a different local calling area for its customers

1 than the local calling area offered by BellSouth. In fact, in the previous
2 hypothetical example of the 615/735 code that Adelphia assigns to Carthage,
3 Adelphia does not need to have any customers who are physically located in
4 the Carthage local calling area. What Adelphia is doing is offering a service
5 that allows customers of other LECs (i.e., BellSouth) to place toll-free calls to
6 selected customers of Adelphia who are physically located in a different local
7 calling area. In the Carthage example, Adelphia is attempting to redefine
8 BellSouth's local calling area, but only in those instances in which a BellSouth
9 end user places a call to selected Adelphia end users.

10
11 Adelphia, however, is only permitted to define the local calling area for its own
12 customers. If, in the example, Adelphia had any of its own local service
13 customers in Carthage and offered those customers the ability to call Nashville
14 without long distance charges, then it could be said that Adelphia was offering
15 a local calling area in Carthage that was different from BellSouth's. The local
16 calling area, however, would be defined that way only for those customers to
17 whom Adelphia provided local service. Adelphia is free to design whatever
18 local calling area it wants for its customers. Adelphia, however, is not free to
19 determine the local calling area for BellSouth customers. Nor is Adelphia free
20 to charge BellSouth reciprocal compensation for traffic that is not local.

21
22 Q. DOES BELL SOUTH CURRENTLY ASSIGN NXX CODES TO
23 CUSTOMERS WHO ARE NOT PHYSICALLY LOCATED IN THE
24 EXCHANGE AREA ASSOCIATED WITH A PARTICULAR NXX?
25

1 A. Yes. BellSouth's FX service allows an FX subscriber that is not physically
2 located in a particular exchange area to receive a telephone number with an
3 NXX code that is associated with that exchange area.

4
5 Q. HOW MANY FX LINES ARE THERE IN TENNESSEE, COMPARED TO
6 TOTAL ACCESS LINES IN TENNESSEE?

7
8 A. As of December 31, 2000, BellSouth was providing 2,292 FX lines in
9 Tennessee, compared to a total of almost 2.7 million BellSouth access lines in
10 Tennessee. The number of FX lines BellSouth provides in Tennessee,
11 therefore, is less than 1% (.09%) of the total number of BellSouth access lines
12 in Tennessee.

13
14 Q. DOES BELLSOUTH BILL CLECS RECIPROCAL COMPENSATION FOR
15 CALLS FROM CLEC CUSTOMERS TO BELLSOUTH FX CUSTOMERS?

16
17 A. Yes, if the FX customer is not an Internet service provider.

18
19 Q. ISN'T THAT INCONSISTENT WITH BELLSOUTH'S POSITION THAT
20 RECIPROCAL COMPENSATION IS DUE ONLY FOR CALLS THAT
21 ORIGINATE AND TERMINATE IN THE SAME LOCAL CALLING
22 AREA?

23
24 A. Not always. A CLEC is allowed to designate the local calling area for calls
25 originated by the CLEC's customers. Let's assume that the CLEC designates

1 the entire LATA as the local calling area for calls originated by the CLEC's
2 customers. When a customer of that CLEC calls a BellSouth FX customer that
3 is physically located within the same LATA, that call originates and terminates
4 in the same local calling area that has been designated by the CLEC. That call,
5 therefore, is a local call, and BellSouth is entitled to collect reciprocal
6 compensation from the CLEC for transporting and terminating that call to the
7 BellSouth FX customer.

8
9 A CLEC, however, may designate the same local calling areas as BellSouth
10 has designated. If that is the case, and if a CLEC customer in the CLEC's
11 local calling area number 1 dials an FX number and reaches a BellSouth FX
12 customer physically located in the CLEC's local calling area number 2, that is
13 not a local call. BellSouth, therefore, should not collect reciprocal
14 compensation from the CLEC for that call.

15
16 Q. WHAT IS BELL SOUTH DOING TO ADDRESS THIS SITUATION?

17
18 A. BellSouth has decided to implement a process to ensure that no reciprocal
19 compensation is charged for any calls to BellSouth's FX customers, even in
20 those instances in which, as I have just explained, BellSouth would be entitled
21 to collect reciprocal compensation for such calls.

22
23 Q. DESCRIBE THE PROCESS THAT BELL SOUTH IS IMPLEMENTING TO
24 ENSURE THAT RECIPROCAL COMPENSATION IS NOT CHARGED
25 FOR CALLS TO BELL SOUTH'S FX CUSTOMERS.

1

2 A. BellSouth is building a database of all existing BellSouth FX numbers, and it is
3 developing programming that will place newly assigned FX numbers into the
4 database as they are assigned. This database will be used to prevent billing of
5 reciprocal compensation on calls to BellSouth FX numbers. These systems are
6 scheduled to be implemented no later than the end of February, 2001.

7

8 Q. HAVE ANY STATE COMMISSIONS IN THE BELLSOUTH REGION
9 ADDRESSED THIS ISSUE?

10

11 A. Yes, the South Carolina, Florida and Georgia Commissions have ruled
12 consistent with BellSouth's position on this issue.

13

14 Q. PLEASE DESCRIBE THE DECISION OF THE PUBLIC SERVICE
15 COMMISSION OF SOUTH CAROLINA.

16

17 A. The Public Service Commission of South Carolina issued its decision in the
18 Adelphia arbitration case on January 16, 2001 (Docket No. 2000-516-C, Order
19 No. 2001-045). That Commission adopted BellSouth's proposed
20 interconnection agreement language, which specifies that, to the extent that
21 traffic to Virtual NXX numbers originates in one local calling area and
22 terminates in a different local calling area, such traffic is not local traffic. The
23 Commission also ruled that BellSouth is not required to pay reciprocal
24 compensation for such traffic, and it ruled that BellSouth is entitled to collect
25 access charges from Adelphia when BellSouth originates such traffic. Since

1 the South Carolina decision is the most recent decision on this issue, and since
2 it was a decision involving both parties to this arbitration, I have attached a
3 copy of that Order as Exhibit JAR-2 to my testimony.
4

5 Q. COULD YOU BRIEFLY DESCRIBE THE FLORIDA DECISION ON THIS
6 ISSUE?
7

8 A. Yes. This issue was recently addressed by the Florida Commission in the
9 arbitration proceeding between BellSouth and Intermedia (Order No. PSC-00-
10 1519-FOF-TP, Docket No. 991854-TP, dated August 22, 2000). In that
11 proceeding, the Florida Commission determined that until Intermedia could
12 provide information to permit proper billing, Intermedia could not give
13 numbers to customers who are physically located outside the rate center where
14 the NPA/NXX code is assigned. Specifically, the Florida Commission ruled at
15 page 43 of its Order:

16 *If Intermedia intends to assign numbers outside of the areas with which*
17 *they are traditionally associated, Intermedia must provide information*
18 *to other carriers that will enable them to properly rate calls to those*
19 *numbers. We find no evidence in the record indicating that this can be*
20 *accomplished.*
21

22 *Based on the foregoing, we find it appropriate that the parties be*
23 *allowed to establish their own local calling areas. Nevertheless, the*
24 *parties shall be required to assign numbers within the areas to which*
25 *they are traditionally associated, until such time when information*

1 *necessary for the proper rating of calls to numbers assigned outside of*
2 *those areas can be provided.*

3
4 Since the time of the Intermedia Arbitration, BellSouth has identified a means
5 to handle the rating issue the Florida Commission recognized. BellSouth
6 would propose not to charge its end user for a long distance call, even though a
7 long distance call had been made. This treatment is similar to the rating of
8 calls from BellSouth end users to 800 numbers. The reason for this approach
9 is that, like 800 service, Adelphia is incurring the long distance costs in this
10 case and, if it chooses to do so, it may recover these costs from the end user
11 that subscribes to the Adelphia service. Of course, like 800 service, this is a
12 long distance service.

13
14 Q. COULD YOU BRIEFLY DESCRIBE THE GEORGIA DECISION ON THIS
15 ISSUE?

16
17 A. Yes. On July 5, 2000, in Docket No. 11644-U (Intermedia Arbitration), the
18 Georgia Commission ordered that Intermedia be allowed to assign its
19 NPA/NXXs in accordance with the establishment of its local calling areas,
20 provided that it furnish the necessary information to BellSouth and all other
21 telecommunication carriers that they may identify local and toll traffic and
22 provide for the proper routing and billing of those calls.

23
24 Q. BESIDES FLORIDA AND GEORGIA, ARE YOU AWARE OF ANY
25 OTHER COMMISSIONS THAT HAVE ADDRESSED WHETHER THE

1 SERVICE DESCRIBED IN THIS ISSUE IS LOCAL OR
2 INTEREXCHANGE?

3
4 A. Yes. The Maine, Texas and Illinois, Commissions have determined that this
5 call scenario is not local service. Texas and Illinois have further stated that
6 reciprocal compensation should not apply in Virtual FX/Virtual NXX
7 situations.

8
9 Q. BRIEFLY DESCRIBE THE MAINE COMMISSION'S ORDER THAT YOU
10 REFERRED TO ABOVE.

11
12 A. The Maine Commission's Order was issued on June 30, 2000 in Docket Nos.
13 98-758 and 99-593. The service at issue in that Order is the same type of
14 service described in this issue. (Order at p. 4). Brooks Fiber ("Brooks" – a
15 subsidiary of MCI WorldCom) had been assigned 54 NPA/NXX codes that it
16 had subsequently assigned to various exchanges that are outside the Portland,
17 Maine local calling area. Brooks then assigned numbers from those codes to its
18 customers who were physically located in Portland. The Maine Commission
19 was trying to determine whether Brooks was entitled to retain the NPA/NXX
20 codes used for the service. If the service was local, Brooks was entitled to the
21 codes; if the service was interexchange, Brooks Fiber had to relinquish the
22 codes. The Maine Commission concluded that the service was interexchange.
23 Since Brooks did not have any customers at all in the rate centers where 45 of
24 the codes were assigned, the Maine Commission ordered the Numbering Plan
25 Administrator to reclaim those codes (Order at p. 29)

1
2 Now, there is a potential misunderstanding that could arise when reading the
3 Maine Order. There are several references to ISP in the Maine Order, but that
4 is because Brooks Fiber had only given numbers in the NPA/NXX code to
5 ISPs. Significantly, the Maine Order does not address the ISP reciprocal
6 compensation issue. Neither the Maine Commission findings on the nature of
7 this traffic nor BellSouth's position on this issue depend on whether the
8 number is given to an ISP. The same findings and the same position apply
9 regardless of the type of customer who has been given the number. It is just a
10 fact in the Maine case that Brooks Fiber had only given numbers to ISPs;
11 therefore, there are references to ISPs in the Order.

12

13 Q. WHAT DO THE ILLINOIS AND TEXAS COMMISSIONS' ORDERS SAY
14 ABOUT THIS ISSUE?

15

16 A In the Illinois Commerce Commission's Order in Docket 00-0332, Level 3
17 Communications, Inc. Arbitration case, dated August 30, 2000, the
18 Commission states at pages 9-10:

19

20 *(b) The reciprocal compensation portion of the issue is*
21 *straightforward. The FCC's regulations require reciprocal*
22 *compensation only for the transport and termination of "local*
23 *telecommunications traffic," which is defined as traffic "that originates*
24 *and terminates within a local service area established by the state*
25 *commission." 47 C.F.R. 51.701 (a)-(b)(1). FX traffic does not*

1 *originate and terminate in the same local rate center and therefore, as*
2 *a matter of law, cannot be subject to reciprocal compensation.*
3 *Whether designated as "virtual NXX," which Level 3 uses, or as "FX,"*
4 *which AI [Ameritech Illinois] prefers, this service works a fiction. It*
5 *allows a caller to believe that he is making a local call and to be billed*
6 *accordingly when, in reality, such call is traveling to a distant point*
7 *that, absent this device, would make the call a toll call. The virtual*
8 *NXX or FX call is local only from the caller's perspective and not from*
9 *any other standpoint. There is no reasonable basis to suggest that calls*
10 *under this fiction can or should be considered local for purposes of*
11 *imposing reciprocal compensation. Moreover, we are not alone in this*
12 *view. The Public Utility Commission of Texas recently determined*
13 *that, to the extent that FX-type calls do not terminate within a*
14 *mandatory local calling area, they are not eligible for reciprocal*
15 *compensation. See, Docket No. 21982, July 13, 2000. On the basis of*
16 *the record, the agreement should make clear that if an NXX or FX call*
17 *would not be local but for this designation, no reciprocal compensation*
18 *attaches. [Emphasis added.]*

19
20 Q. HOW DOES BELL SOUTH'S POSITION COMPARE TO THE MAINE,
21 ILLINOIS AND TEXAS COMMISSIONS' ORDERS?

22
23 A. BellSouth's position is completely consistent with these three Orders. Most
24 importantly, the Maine Commission found that the service was interexchange.
25 (Order at pps. 4, 8-12, 18). The Maine Commission concluded that this service

1 and FX service have some parallels but the closest parallel is 800 service.
2 (Order at pps. 11-12) The Maine Commission found that Brooks is not
3 attempting to define its local calling area with this service. (Order at p 14)
4 Finally, the Maine Commission concluded that this service has no impact on
5 the degree of local competition. (Order at p. 13) The Illinois and Texas
6 Commissions' Orders went a step further, specifying that Virtual FX or NXX
7 calls which do not terminate within a mandatory local calling area are not
8 eligible for reciprocal compensation. Again, none of these findings depend on
9 whether the number is given to an ISP or another type of customer.
10
11 Q. PLEASE COMPARE THE VIRTUAL NPA/NXX ADDRESSED IN THIS
12 ISSUE WITH BELLSOUTH'S FOREIGN EXCHANGE ("FX SERVICE").
13
14 A. Although similar, these services are not exactly the same. In the case of the
15 FX service, a customer dials a number that appears to be a local number. The
16 call is transported to the customer's serving wire center. The switch looks at
17 the number and, based on the translations for the number, it sends the call to
18 the "foreign exchange" where the customer being called resides. BellSouth's
19 costs are recovered from BellSouth's customers; the originating customer pays
20 for the local portion of the call, and the FX customer pays BellSouth to
21 terminate the call in a different local calling area.
22
23 Q. ADELPHIA'S PETITION, AT PARAGRAPH 22, STATES THAT THE
24 COSTS INCURRED BY BELLSOUTH IN ORIGINATING A "LOCALLY-

1 DIALED" CALL FROM ITS CUSTOMERS DO NOT CHANGE BASED ON
2 THE LOCATION OF ADELPHIA'S CUSTOMERS. PLEASE COMMENT.
3
4 A. Adelphia is missing the point. The express purpose of reciprocal
5 compensation is to cover the cost of transporting and terminating local calls.
6 Access charges, on the other hand, cover the costs of originating and
7 terminating non-local traffic. The end points of a call determine whether or
8 not a call is local (and thus subject to reciprocal compensation) or non-local
9 (and thus subject to access charges). Thus, when a call from a BellSouth
10 customer originates in one local calling area and terminates at an Adelphia
11 customer location in a different local calling area, that is not a local call.
12 Adelphia, therefore, is not entitled to reciprocal compensation for such a call.
13 Instead, BellSouth is entitled to access charges for originating a non-local call.
14
15 Q. IS BELL SOUTH COMPENSATED FOR THE COSTS INCURRED WHEN
16 ONE OF ITS CUSTOMERS CALLS A PERSON LOCATED IN A
17 DIFFERENT LOCAL CALLING AREA?
18
19 A. Yes. When a BellSouth end user calls a person located outside of that end
20 user's basic local calling area, BellSouth receives compensation in addition to
21 the local rates it charges to its customers. When BellSouth carries an
22 intraLATA toll call, for instance, BellSouth collects toll charges from its
23 customer who placed the call. When a BellSouth customer places an
24 interLATA call, BellSouth collects originating access from the IXC. When
25 BellSouth carries an intraLATA call from a BellSouth end user to a BellSouth

1 FX customer, BellSouth receives compensation for the FX service (including
2 the toll component of that service) from its FX customer. Similarly, when
3 BellSouth carries calls to a BellSouth customer with an 800 number, BellSouth
4 receives compensation for the 800 service (including the toll component of that
5 service) from its 800 service customer. In each of these cases, BellSouth is
6 compensated from some source other than the local rates it charges its
7 customers for placing local calls. That additional source may be BellSouth's
8 end user customer (i.e., toll charges), another telecommunications provider
9 such as an IXC (i.e., access charges), or an FX or 800 service subscriber (i.e.,
10 FX charges or 800 charges).

11
12 In effect, Adelphia is asking the Authority to require BellSouth to originate a
13 non-local call free of charge. To add insult to injury, Adelphia demands that
14 BellSouth actually pay, rather than be paid, for this service. Adelphia's
15 request, therefore, ignores not only the FCC's definition of local calls, but also
16 the workings of the inter-carrier compensation mechanisms of reciprocal
17 compensation and access.

18
19 Q. HOW DOES THE RESOLUTION OF THIS ISSUE IMPACT THE DEGREE
20 OF LOCAL COMPETITION IN TENNESSEE?

21
22 A. It does not. The service at issue here has nothing to do with local competition.
23 Using the Carthage example, the service described in this issue does not create
24 a local service, let alone any local service competition, in Carthage. Local
25 service competition is only created where Adelphia offers local service to its

1 own customers. The service at issue here is offered to BellSouth's local
2 service customers in Carthage, regardless of whether Adelphia has any local
3 service customers physically located in Carthage. When Adelphia allows a
4 BellSouth customer in Carthage to make a toll free call to one of its true 800
5 service numbers, no local competition is created in Carthage. Likewise, when
6 Adelphia assigns a number out of the 615/735 code to one of its customers in
7 Nashville, no local competition is created in Carthage (where the 615/735 code
8 is assigned). In this case, Adelphia has no contact or business relationship with
9 the BellSouth customers for use of this service. These customers remain, in
10 fact, BellSouth's local service customers. There is nothing that Adelphia is
11 providing in this case that even resembles local service. Yet, Adelphia claims
12 that it should be paid reciprocal compensation for providing this service.

13

14 Q. DOES BELLSOUTH'S POSITION IMPACT ADELPHIA'S ABILITY TO
15 SERVE ISPs?

16

17 A. No, BellSouth's position has no impact on Adelphia's ability to serve ISPs.
18 Adelphia is free to target and select customers, and assign telephone numbers
19 as it chooses. BellSouth is only saying that calls which originate and terminate
20 with customers in different local calling areas are not local and, therefore, are
21 not subject to reciprocal compensation.

22

23 Q. IN PARAGRAPH 20 OF THE PETITION, ADELPHIA SUGGESTS THAT
24 COSTS ASSOCIATED WITH ACCESSING THE INTERNET WOULD

1 INCREASE IF BELL SOUTH RESTRICTS CLECS' USE OF NXX CODES.
2 PLEASE COMMENT.

3
4 A. First let me reiterate, BellSouth is not attempting to restrict Adelphia's use of
5 NXX codes. Second, as I have already stated, reciprocal compensation is
6 designed to compensate a carrier for transporting and terminating a local call.
7 Long distance calls have different compensation mechanisms that apply and
8 would continue to apply in the cases we have been discussing. When Adelphia
9 assigns telephone numbers to a customer in a way that allows other parties to
10 make a long distance call to that customer but not be charged for a long
11 distance call, Adelphia may either recover the costs associated with such an
12 arrangement from its customer who is benefiting from the arrangement, or
13 Adelphia itself may absorb those costs. Adelphia, however, cannot recover
14 those costs from BellSouth in the form of reciprocal compensation.

15
16 Q. WHAT IS BELL SOUTH REQUESTING OF THE AUTHORITY?

17
18 A. BellSouth is asking the Authority to follow the lead of the Commission rulings
19 described above. BellSouth is not asking the Authority to restrict Adelphia's
20 ability to allocate numbers out of its assigned NPA/NXX codes in whatever
21 manner it sees fit. BellSouth simply requests the Authority to determine that if
22 Adelphia assigns telephone numbers to customers that are physically located in
23 a different local calling area than the local calling area where the NPA/NXX is
24 assigned, then calls originated by BellSouth end users in the local calling area
25 where the NPA/NXX is assigned to those numbers are not local calls. Such

1 calls are not considered local traffic under the agreement and, therefore, no
2 reciprocal compensation should apply. Furthermore, this Authority should find
3 that if Adelphia assigns NPA/NXX numbers outside the assigned local calling
4 area, Adelphia must identify such long distance traffic and pay BellSouth for
5 the originating switched access service BellSouth provides on those calls.
6

7 ***Issue 3: (Attachment 3, Section 6.8)***

8 ***Should Internet Protocol Telephony be excluded from local traffic subject to***
9 ***reciprocal compensation?***
10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
12

13 A. It is BellSouth's understanding that this issue has been resolved in Tennessee.
14 If this is not the case, BellSouth reserves the right to file additional testimony
15 on this issue.
16

17 ***Issue 4 (Attachment 3, Section 6.1.1)***

18 ***Should the parties be required to pay reciprocal compensation on traffic***
19 ***originating from or terminating to an enhanced service provider, including***
20 ***an Internet Service Provider ("ISP")?***
21

22 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
23

1 A. It is BellSouth's understanding that this issue has been resolved in Tennessee.
2 If this is not the case, BellSouth reserves the right to file additional testimony
3 on this issue.
4

5 ***Issue 5 (Attachment 3, Section 6.1.5)***

6 ***Is BellSouth required to pay tandem charges when Adelphia terminates***
7 ***BellSouth local traffic using a switch serving an area comparable to a***
8 ***BellSouth tandem?***
9

10 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

11

12 A. It is BellSouth's understanding that this issue has been resolved in Tennessee.
13 If this is not the case, BellSouth reserves the right to file additional testimony
14 on this issue.
15

16 ***Issue 6: (Attachment 3, Sections 1.5, 1.6 and 1.7)***

17 ***How should the parties define the Points of Interface for their networks?***
18

19 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

20

21 A. It is BellSouth's understanding that this issue has been resolved in Tennessee.
22 If this is not the case, BellSouth reserves the right to file additional testimony
23 on this issue.

1

2 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

3

4 A. Yes.

5

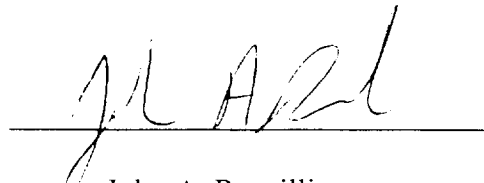
6 DOCs # 244828

AFFIDAVIT

STATE OF: Georgia
COUNTY OF: Fulton

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared John A. Ruscilli –Senior Director – State Regulatory, BellSouth Telecommunications Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 00-00927 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 26 pages and 2 exhibit(s).


John A. Ruscilli

Sworn to and subscribed
before me on 1/30/00


NOTARY PUBLIC

MICHEALE F. HOLCOMB
Notary Public, Douglas County, Georgia
My Commission Expires November 3, 2001

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

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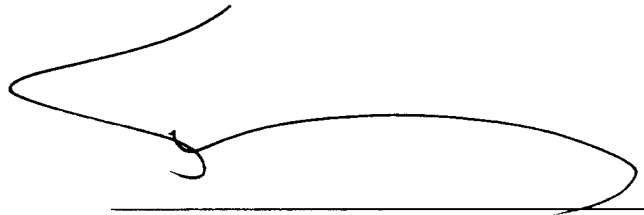
Henry Walker, Esquire
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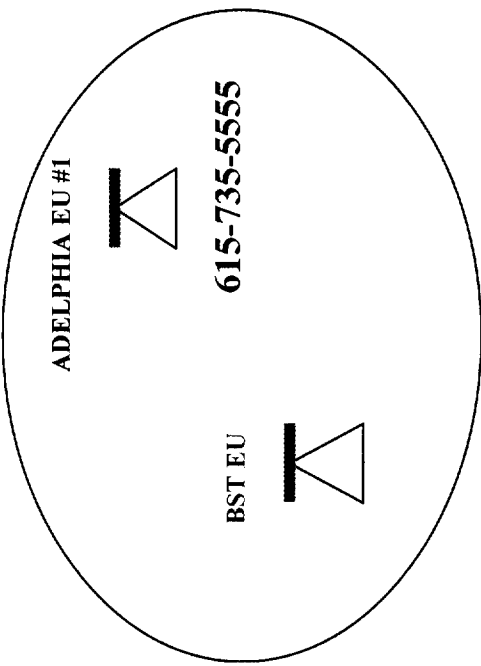
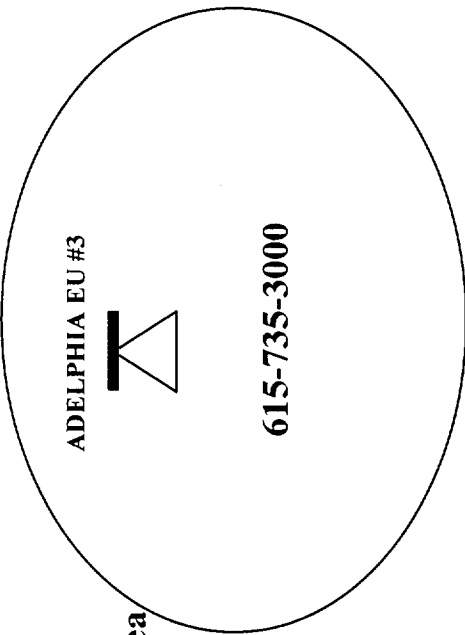
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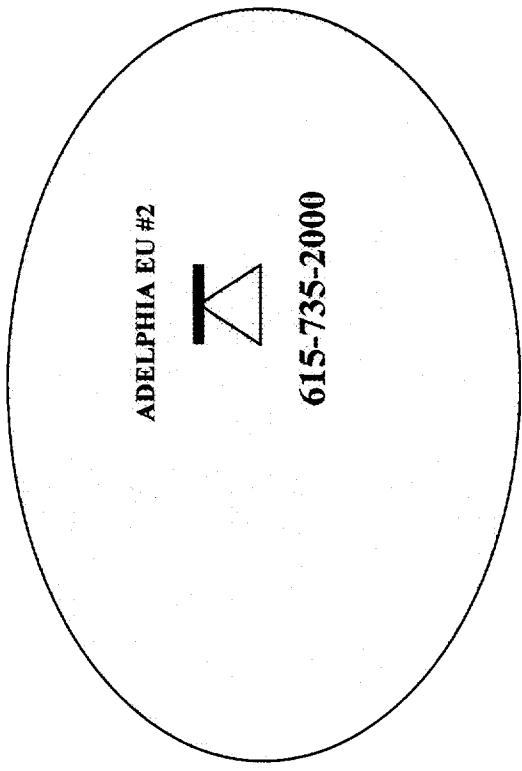
John Glicksman, Esq.
Adelphia Business Solutions
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**New York City
Local Calling Area**

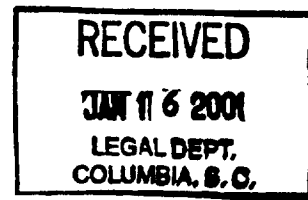


**Carthage
Local Calling Area**



**Nashville
Local Calling Area**

BellSouth Telecommunications, Inc.
TRA Docket No. 00-00927
Exhibit JAR-2
Pages 1 - 15
January 31, 2000



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2000-516-C - ORDER NO. 2001-045
JANUARY 16, 2001

— WATSON
— LACKEY
— MORTON
— CULPEPPER
— ~~TURNER~~ Turner
— ALSTIN
— TUCKER
— ~~REGAN~~ Reg. Paralegal
— ADAMS
— PURDAY
— THOMPSON
— BASKINS

IN RE: Petition of Adelphia Business Solutions of)
South Carolina, Inc. for Arbitration of an)
Interconnection Agreement with BellSouth) ORDER ON
Telecommunications, Inc. Pursuant to Section) ARBITRATION
252(b) of the Communications Act of 1934,)
as Amended by the Telecommunications Act)
of 1996.)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Arbitration of Adelphia Business Solutions of South Carolina, Inc. ("Adelphia") to establish an interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth") pursuant to Section 252(b) of the Telecommunications Act of 1996 ("1996 Act"). On October 11, 2000¹, Adelphia filed its Petition after Adelphia and BellSouth were unable to reach agreement on all issues despite good faith negotiations between the parties. Adelphia's Petition for Arbitration presented five unresolved issues (Issues No. 1-5). BellSouth filed a Response on November 3, 2000, and by its Response presented one additional issue (Issue No. 6).

¹ By letter dated May 4, 2000, Adelphia made a bona fide request for interconnection, services, or network elements pursuant to Section 252(a) of the 1996 Act. Pursuant to Section 252(b)(1) of the 1996 Act,

Following the institution of this proceeding, the Commission established a schedule and procedure for arbitration.² Pursuant to the scheduling order, the parties filed testimony setting forth the outstanding issues to be arbitrated by the Commission. The parties also submitted lists of suggested examination questions.

A hearing on the issues raised in Adelphia's Petition and BellSouth's Response was scheduled for December 21, 2000. On or about December 20, 2000, the parties advised the Commission that, through negotiations that had continued after the Petition had been filed, five of the six issues initially presented for arbitration had been resolved. With the concurrence of the Commission, the parties agreed to stipulate the pre-filed testimony into the record, waive a hearing, and submit briefs addressing the one remaining issue in this proceeding. Thus, this Commission will only address in this Order the remaining unresolved issue as presented by the parties.³

Adelphia presented the pre-filed direct and rebuttal testimony of Mr. Eugene J. Brown, Director of LEC Relations for Adelphia Business Solutions, LLC, a parent corporation of Adelphia Business Solutions of South Carolina, Inc., and the pre-filed direct and rebuttal testimony of Mr. Timothy J. Gates, Senior Vice President of QSI Consulting, Inc., a consulting firm specializing in the areas of telecommunications policy, econometric analysis and computer aided modeling. BellSouth presented the pre-filed

Adelphia could bring a petition for arbitration of outstanding issues during the period from the 135th day to the 160th day after May 4, 2000.

² See Commission Order No. 2000-884 (October 31, 2000).

³ The Commission "shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)" and "shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." 47 U.S.C. Section 252(b)(4)(A) and 47 U.S.C. Section 252(b)(4)(C).

direct and surrebuttal testimony of Mr. John A. Ruscilli, Senior Director for State Regulatory for the nine-state BellSouth region. All testimony has been stipulated into the record by consent of both parties. Briefs were filed by both parties on January 5, 2001.

II. STATEMENT OF ISSUE

The issue before the Commission for determination is set forth in Adelphia's Petition as Issue 2 and is stated as follows:

Issue 2: (A) Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Adelphia based solely upon the physical location of Adelphia's customers? (B) Should BellSouth be able to charge originating access to Adelphia on all calls going to a particular NXX⁴ code based upon the location of any one customer?

III. POSITIONS OF THE PARTIES

Adelphia's Position:

Adelphia proposes that reciprocal compensation should apply to all calls that are "local" to the calling party, regardless of the physical location of the ultimate called party and that BellSouth should be prohibited from billing Adelphia access charges for that traffic. Adelphia contends that this position is consistent with historical practice in the industry of rating a call as local or toll by referring to and comparing the NXX's of the calling and called parties. Adelphia also suggests that compensation for this traffic as local more accurately reflects the costs incurred by both parties, arguing that the costs BellSouth incurs to transport a call destined for an Adelphia customer do not vary with the actual location of the called customer. Finally, Adelphia contends that its proposal

⁴ "NXX codes are the fourth through sixth digits of a ten-digit telephone number. These codes are used as rate center identifiers ..." Direct Prefiled Testimony of Timothy J. Gates (hereafter, "Gates Direct") at 17, II. 1-2.

regarding reciprocal compensation for calls to customers who use these "virtual NXX" arrangements, among other things, will benefit those businesses, including ISPs, who find it desirable to obtain local numbers in several communities, while maintaining a limited number of physical locations, in order to reach and to serve a broader base of customers. Indeed, Adelphia claims that one benefit of this type of service is that it provides wider, more reasonably priced access to the Internet through the use of local telephone numbers, especially in rural and sparsely populated areas of the state.

BellSouth's Position:

BellSouth asserts that the actual physical end-points of a call should determine whether it is local or toll, not whether the NXX codes are associated with the same local calling area. Under BellSouth's position, the parties should be obligated to pay reciprocal compensation for calls to numbers with NXX codes associated with the same local calling area, only if the call actually terminates to the other party's end users physically located in the same local calling area. BellSouth asserts that when the called party's physical location is not in the same local calling area as the calling party, then the communications is an intraLATA toll call for which BellSouth is entitled to receive originating access charges.

IV. DISCUSSION

This issue centers on the treatment of a particular type of traffic referred to as "virtual NXX." "Virtual NXX" allows a customer to obtain a telephone number in a local calling area in which the customer is not physically located.⁵ As far as the person calling

⁵ Gates Direct at 17, ll. 1 -7 and 19, ll. 4 - 5.

the number is concerned, the call is a local call, but the party answering the call is actually located somewhere else within the LATA. This type of arrangement is referred to as "virtual NXX" because the customer assigned to the telephone number has a "virtual" presence in the associated local calling area.⁶ This presence, however, "is just a virtual presence, not a physical one."⁷ "Virtual NXX" is similar to foreign exchange ("FX") service⁸ provided by an ILEC.⁹ However unlike FX service, "virtual NXX" does not use lines dedicated to particular customer for transporting the call between rate centers.¹⁰ "Virtual NXX" also closely parallels 800 service.¹¹

When the North American Numbering Plan Administrator ("NANPA") gives Adelphia an NPA/NXX code, Adelphia must assign that NPA/NXX code to a rate center.¹² All other carriers use this assignment information to determine whether calls originated by their customers to a number in that NPA/NXX code are local or long

⁶ *Id.* at 17, ll. 5 – 7.

⁷ *Id.* at 22, ll. 8-10.

⁸ Foreign exchange, or FX, service is described by witness Ruscilli as

FX service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served. The service is provisioned over dedicated facilities from the subscriber's premises to a foreign office. ... it appears to the originating customer that they are making a local call when, in fact, the terminating location is outside the local calling area. Further, because the call to the FX number appears local and the calling and called NPA/NXXs are assigned to the same rate center, the originating end user is not billed for a toll call. Despite the fact that the calls appear to be local to the originating caller, FX service is clearly a long distance service. The reason the originating end user is not billed for a toll call is that the receiving end user has already paid for the charges in the form of dedicated access from the real NPA/NXX office to the FX ... office. There are charges for this function and they are being paid by the customer that is benefiting from the FX service.

Direct Prefiled Testimony of John A. Ruscilli (hereafter Ruscilli Direct) at 13, 1.23 – 14, l. 13.

⁹ Gates Direct at 17, ll. 4-5, 20-21.

¹⁰ Ruscilli Direct at 14, ll. 20 – 21.

¹¹ *Id.* at 14, ll. 18.

¹² *Id.* at 10, ll. 21-23.

distance calls.¹³ There is no dispute that when a BellSouth customer located in a given local calling area calls an Adelphia customer located in the same local calling area, BellSouth owes reciprocal compensation to Adelphia for transporting and terminating the call.¹⁴

BellSouth's concerns regarding this issue are explained in the direct testimony of Mr. Ruscilli.¹⁵ As Mr. Ruscilli notes, Adelphia may assign a telephone number that is associated with the Orangeburg, South Carolina local calling area to an Adelphia customer physically located in Columbia, South Carolina.¹⁶ When a BellSouth customer in Orangeburg calls this "virtual NXX" number to reach the Adelphia customer located in Columbia, the end points of the call are in Orangeburg and Columbia, and, therefore, the call is a long distance call.¹⁷ As Mr. Ruscilli notes, "[u]nder Adelphia's proposal, BellSouth would pay reciprocal compensation on those calls from Orangeburg to Columbia ... which are clearly long distance calls and not subject to reciprocal compensation."¹⁸

It is not unlawful for Adelphia or another CLEC to provide "virtual NXXs" to its customers.¹⁹ Adelphia, or another CLEC, may assign an NXX code to a customer who is not physically located in the rate center to which the NXX code has been assigned. The issue which this Commission must decide is whether a call to that "virtual NXX" is a

¹³ *Id.* at 10, l. 23 to 11, l. 1.

¹⁴ *Id.* at 11, l. 19 to 12, l. 6.

¹⁵ See Ruscilli Direct at 11-13.

¹⁶ Ruscilli Direct at 12, ll. 10-12.

¹⁷ *Id.* at 12, ll. 16-17.

¹⁸ *Id.* at 12, l. 22 - p. 13, l. 2.

¹⁹ Gates Direct at 17, ll. 2-4 and 17-20.

local call for which reciprocal compensation must be paid or a toll call on which originating access charges are due.

The FCC's rules provide that reciprocal compensation is due only when traffic originates and terminates within the same local calling area. 47 CFR § 51.701(a) provides that "[t]he provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other communications carriers." "Local telecommunications traffic" is defined as "telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission ..."²⁰ 47 CFR § 51.701(b)(1).

In resolving this issue, the Commission must give due regard to the FCC rules. The FCC definition of local telecommunications traffic is clear that telecommunications traffic is local only if it originates and terminates within the same local calling area.²¹ Further, it is equally clear under the FCC's rules that reciprocal compensation applies only to local telecommunications traffic.²²

Applying the FCC rules to the factual situation in the record before this Commission regarding this issue of "virtual NXX", this Commission concludes that reciprocal compensation is not due to calls placed to "virtual NXX" numbers as the calls do not terminate within the same local calling area in which the call originated. As noted above, the FCC rules require reciprocal compensation only for the transport and

²⁰ The remainder of this subsection, which defines local telecommunications traffic between a LEC and a CMRS provider, is not relevant to this proceeding.

²¹ See 47 CFR § 51.701(b)(1).

²² See 47 CFR § 51.701(a).

termination of local telecommunications traffic which is defined as traffic that originates and terminates within a local service area established by the state commission.”²³ Typical traffic associated with a “virtual NXX” number does not originate and terminate within the same local calling area. Therefore, traffic associated with a “virtual NXX” number does not meet the definition of local telecommunications traffic and thus cannot be subject to reciprocal compensation.

Adelphia suggests to the Commission that the local nature of a call is determined based upon the NXX of the originating and terminating number, and Adelphia further asserts that this practice should be continued so that calls between an originating and terminating NXX, associated with the same local calling area, should be rated as local.²⁴ The problem with this position as proposed by Adelphia is that it does not give regard to where the call actually terminates. While the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a “virtual NXX” number is not in the same local service area as the originating point of the call. Thus, Adelphia’s position is not consistent with FCC regulation 51.701(b)(1) which defines local telecommunications traffic as “traffic ... that originates and terminates within a local service area established by the state commission.” (emphasis added).

Other state commissions have also reached the conclusion that we reach on this issue. The Illinois Commerce Commission recently considered the same “virtual NXX” issue that is presented in this docket in an arbitration proceeding between Level 3

²³ See 47 CFR § 51.701(a) and § 51.701(b)(1).

Communications and Ameritech Illinois. The Illinois Commission concluded that if a call would not be local but for the assignment of a “virtual NXX” number to the called party, no reciprocal compensation is owed.²⁵ The Illinois Commission explained that:

The FCC’s regulations require reciprocal compensation only for the transport and termination of “local telecommunications traffic,” which is defined as traffic “that originates and terminates within a local service area established by the state commission.” 47 C.F.R. 51.701 (a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as “virtual NXX,” which Level 3 uses, or as “FX,” which [Ameritech Illinois] prefers, this service works a fiction. It allows a caller to believe that he is making a local call and to be billed accordingly when, in reality, such call is traveling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller’s perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation. . . . On the basis of the record, the agreement should make clear that if [a Virtual] NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.

Arbitration Decision at 9-10 (emphasis added).

The Maine Public Utilities Commission found that a “virtual NXX” service similar to that described by Adelphia constitutes “an interexchange service, not a local exchange service.”²⁶ The Texas Public Utility Commission determined that when calls to “virtual NXX” numbers do not terminate within a mandatory local calling area, they are

²⁴ Gates Direct at 15, l. 22 - 16, l. 4.

²⁵ Arbitration Decision, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332 (August 30, 2000), at 10.

²⁶ Order, *In re: Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a/ Brooks Fiber*, Docket No. 98-758 (Me. P.U.C. June 30, 2000), at p. 12.

not subject to reciprocal compensation.²⁷ The Florida Public Service Commission ruled that “[i]f [a CLEC] intends to assign numbers outside of the areas with which they are traditionally associated, [the CLEC] must provide information to other carriers that will enable them to properly rate calls to those numbers.”²⁸ The Florida Commission also ordered that “the parties shall be required to assign numbers within the areas to which they are traditionally associated, until such time when information necessary for the proper rating of calls to numbers assigned outside of those areas can be provided.”²⁹ The Georgia Public Service Commission ruled that a CLEC is allowed “to assign its NPA/NXX codes in accordance with the establishment of its local calling areas, provided that it furnish the necessary information to BellSouth and all other telecommunications carriers so that they may identify local and toll traffic and provide for the proper routing and billing of calls.”³⁰

As this Commission has determined that calls to “virtual NXX” numbers are not local calls for which reciprocal compensation must be paid, we must now consider whether BellSouth should be able to collect originating access on these calls. BellSouth asserts that if its position prevails on this issue that it must be allowed to collect originating access charges on calls to “virtual NXX” numbers that originate in one local calling area and terminate in a different local calling area. Adelphia asserts that the

²⁷ Arbitration Award, *In re: The Federal Telecommunications Act of 1996*, Docket No. 21982 (July 14, 2000), at [WESTLAW *8].

²⁸ Final Order On Arbitration, *In re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc.*, Docket No. 99-1854-TP, Order No. PSC-00-1519-FOF-TP (August 22, 2000) at 43.

²⁹ *Id.*

imposition of originating access charges is inappropriate. Adelphia argues that since BellSouth and Adelphia provide the same network functions whether the call is to a physical presence or to a virtual presence that the compensation should be the same.³¹ Additionally, Adelphia maintains that BellSouth's access charges are not cost-based.³²

In support of its position, Adelphia cites to the FCC decision in *TRS Wireless v. US West, et al.*³³ Adelphia asserts that the *TRS Order* at paragraph 34 specifically notes that "[t]he Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation."³⁴

In the *TRS Order*, the FCC was called upon to address five formal complaints filed by paging carriers against local exchange companies. The complaints alleged that the LECs improperly imposed charges for facilities used to deliver LEC-originated traffic and for Direct Inward Dialing ("DID") numbers in violation of the 1996 Act and the FCC's rules. In reaching its decision in the *TRS Order*, the FCC determined that its rules required LECs to deliver, without charge, traffic to CMRS providers anywhere within the local calling area, or Major Trading Area ("MTA") in the case of CMRSs, in which the call originated. In paragraph 31 of the *TRS Order*, the FCC stated that LECs are required "to deliver, without charge, traffic to CMRS providers anywhere within the MTA in

³⁰ Order, *Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement with Intermedia Communications, Inc. Pursuant To Section 252(b) of the Telecommunications Act of 1996*, Docket No. 11644-U (July 5, 2000) at 13.

³¹ Gates Direct at 24, ll. 4 - 9.

³² Gates Direct at 26, ll. 1-3.

³³ See *TRS Wireless v. US West, et al.*, Memorandum and Order, FCC 00-194 (rel June 21, 2000). (hereafter *TRS Order*).

³⁴ Gates Direct at 24, ll. 9 - 13, citing *TRS Wireless v. US West, et al.*, Memorandum and Order, FCC 00-194 (rel June 21, 2000).

which the call originated, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries.”³⁵ It is important to note that the FCC did not say in the *TRS Order* that LECs were required to deliver calls to CMRS providers to points outside the MTA in which the call originated, but rather only had to deliver that traffic at no charge within the MTA where the call originated.

47 CFR § 51.701(b)(2) defines “local telecommunications traffic” between a LEC and a CMRS provider. While that section is not applicable to the issue before this Commission, the FCC’s application of that section provides guidance to this Commission. Under 47 CFR § 51.701(b)(2), local telecommunications traffic is defined as local if at the beginning of the call, the telecommunications traffic originates and terminates within the same MTA. In the *TRS Order*, the FCC only required LECs to deliver at no charge that traffic which met the definition of local telecommunications traffic under 47 CFR § 51.701(b)(2), that is traffic that terminated within the MTA where the call originated.

The issue before this Commission concerns the definition of local telecommunications traffic contained in 47 CFR § 51.701(b)(1), which provides that “telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission.” Applying the rationale of the *TRS Order* to the issue presently before this Commission involving the definition contained in 47 CFR § 51.701(b)(1), this Commission concludes that BellSouth should be compensated for the “virtual NXX”

³⁵ *TRS Order*, pp. 23 –23, ¶ 31.

traffic. Under the rationale of the *TRS Order*, BellSouth is only required to deliver traffic at no charge within a local service area, and as the typical "virtual NXX" traffic terminates outside the local service area, BellSouth is not required to deliver that "virtual NXX" traffic at no charge.

We further find that imposition of originating access charges for this traffic does not, as alleged by Adelphia, create an economic barrier to any other providers providing service to ISPs and give BellSouth a significant competitive advantage.³⁶ As discussed above, BellSouth is not obligated to carry this traffic at no cost. BellSouth is entitled to compensation for carrying this traffic.

Further, the Commission concludes that originating access charges are the appropriate compensation rate. Without the "virtual NXX" designation, the traffic would be toll traffic. The proposal before this Commission in the context of this arbitration is whether originating access charges are due or no compensation at all. Based upon our conclusion that some compensation is due, we conclude that originating access charges are to be allowed for this traffic.

V. CONCLUSION

For the foregoing reasons, the Commission rejects the position of Adelphia on Issue No. 2 and adopts BellSouth's position on this issue. In adopting BellSouth's position, the Commission adopts the language proposed by BellSouth for inclusion in the interconnection agreement and orders the parties to incorporate the language proposed by BellSouth and set forth below into their interconnection agreement:

³⁶ Gates Direct at 28, ll. 18-20.

6.1.6 The Parties agree that the jurisdiction of a call is determined by its originating and terminating (end to end) points. For the purpose of delivery of BellSouth originating traffic to Adelphia, BellSouth will pay to Adelphia reciprocal compensation for Local Traffic terminating to Adelphia end users physically located in the BellSouth rate center to which the Adelphia end user's NPA/NXX is assigned. If Adelphia assigns NPA/NXXs to specific BellSouth rate centers and assigns numbers from those NPA/NXXs to end users physically located outside of the rate center to which the NPA/NXX is assigned, BellSouth traffic originating from within the BellSouth rate center where the NPA/NXX is assigned and terminating to an Adelphia customer physically located outside of such rate center, and at a location toll to the BellSouth originating rate center, shall not be deemed Local Traffic, and no compensation from BellSouth to Adelphia shall be due therefore. Further, Adelphia agrees to identify such traffic to BellSouth and to compensate BellSouth for such traffic at BellSouth's tariffed switched access rates. In addition, Adelphia should not use NPA/NXXs to collect BellSouth originated local or intraLATA toll traffic for delivery to a point outside the LATA from where the originating NPA/NXX rate center resides.

6.1.6.1 If Adelphia does not identify such traffic to BellSouth, to the best of BellSouth's ability BellSouth will determine which whole Adelphia NPA/NXXs on which to charge the applicable rates for originating intrastate network access service as reflected in BellSouth's Intrastate Access Service Tariff. BellSouth shall make appropriate billing adjustments if Adelphia can provide sufficient information for BellSouth to determine whether said traffic is local or toll.

IT IS THEREFORE ORDERED THAT:

1. The Commission adopts the language proposed by BellSouth for inclusion in the interconnection agreement as set forth above.
2. BellSouth shall not be required to pay reciprocal compensation for any call terminating to a customer who is physically located outside of the local calling area where the call originates.

3. BellSouth shall be allowed to impose originating access charges on all calls going to a "virtual NXX" code where the traffic is delivered to customers located outside the local calling area where the call originates.

4. This Order is enforceable against Adelphia and BellSouth. BellSouth affiliates which are not incumbent local exchange carriers are not bound by this Order. Similarly, Adelphia affiliates are not bound by this Order. This Commission cannot force contractual terms upon a BellSouth or Adelphia affiliate which is not bound by the 1996 Act.

5. This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)